Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-29

JOHN H. WILKERSON and BARBARA WILKERSON, His Wife,
Petitioners,

vs.

DAVID E. MURRAY, Director of Public Works, and ST. LOUIS COUNTY, MISSOURI, a Body Corporate and Politic,
Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of Missouri

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INDEX

	Page
Opinion below	1
Jurisdiction	2
Questions presented	2
Ordinance provisions involved	3
Statement of the case	3
Reasons for granting the writ	6
Conclusion	10
Appendix (Opinion and Judgment of the Supreme Court of Missouri)	A-1

CITATIONS

Cases:

Appeal of Girsh, 437 Pa. 237, 263 A. 2d 395	7
Douglas Township v. Badman, 206 Pa. Super. 390, 213 A. 2d 88	8
In Re Wiley, 120 Vt. 359, 140 A. 2d 11	8
People v. Clute, 18 N.Y. 2d 99, 224 N.E. 2d 734, 278 N.Y.S. 2d 231	8
State v. Work, 75 Wash. 2d 212, 449 P. 2d 806	8
Summerell v. Phillips, 239 So. 2d 786	9
Village of Euclid v. Ambler Realty Co., 272 U.S. 365	6, 9
Women's Kansas City St. Andrew Society v. Kansas City, Missouri, 58 F. 2d 593 (8th Circuit)	9

Miscellaneous:

Bartke & Gage, "Mobile Homes: Zoning and Taxation, 55 Cornell L. Rev. 491, 508 10

Fourteenth Amendment 2, 6

Mortgage Credit, Hearings Before the Subcomm. on Housing and Urban Affairs of the Senate Comm. on Banking and Currency, 90th Cong., 1st Session 159 (1967) 9

Note: "Zoning Regulation of Mobile Homes in Pennsylvania", 66 Dickenson Law Rev. 301 (1962) 8

St. Louis County Revised Ordinances 1964, Section 1003.020 and Section 805.111-1 (g) 3, 4, 7

28 U.S.C., § 1257 (3) 2

130 "Financial World", September 4, 1968 9

IN THE

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Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of Missouri

The petitioners John H. Wilkerson and Barbara Wilkerson respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Missouri entered in this proceeding on February 8, 1971.

OPINION BELOW

The opinion of the Supreme Court of Missouri, styled State ex rel. John H. Wilkerson and Barbara Wilkerson, his wife v. David Murray, Director of Public Works, and

St. Louis County, Missouri, a body corporate and politic, is reported at 463 S. W. 2d 821 and is reproduced in the Appendix hereto. No written opinion was rendered by the Circuit Court of St. Louis County, Missouri, in which the case originated.

JURISDICTION

The opinion of the Supreme Court of Missouri was entered on February 8, 1971. A timely motion to transfer to the Court en banc or for rehearing was denied on March 8, 1971. Upon application of petitioners made within ninety (90) days of that decision, this court extended the time in which to petition for a writ of certiorari for an additional thirty (30) days. This petition is filed within that extended period. The jurisdiction of this court is invoked under 28 U.S.C., § 1257(3).

QUESTIONS PRESENTED

Whether a zoning ordinance which specifically excludes a mobile home from the definition of the term "dwelling", thereby forcing all mobile homes to be located only in mobile home parks to the exclusion of any other residential zone, is so arbitrary and unreasonable as to constitute the taking of property without due process of law guaranteed by the Fourteenth Amendment to the Court of the United States.

Whether a zoning ordinance which specifically excludes from the definition of "dwelling" a mobile home and thereby requires that mobile home owner live only in mobile home parks deprives such persons of the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

ORDINANCE PROVISIONS INVOLVED

St. Louis County Revised Ordinances, 1964, as amended:

Section 1003.020

"(20) Dwelling: Any building, or portion thereof, used exclusively for human habitation, except hotels, motels or house trailers.

"(22) Dwelling, Single Family: A building designed for or occupied exclusively by one family.

"(41) House Trailer: A self-contained mobile structure intended to be used for dwelling purposes which has been or recently may be equipped with other wheels or other devices for transporting said structure."

Section 805.111-1(g)

"(g) Arrangements for compliance in all respects with the applicable standards and requirements of the sanitary, health and zoning ordinances of St. Louis County. For the purposes of this sub-section, a trailer is considered to be a single family dwelling with respect to the intensity of use requirements of the zoning ordinance.

STATEMENT OF THE CASE

At all times relevant to this case, John and Barbara Wilkerson have been the owners of a piece of property in the unincorporated section of St. Louis County, Missouri, with the intention of making their family home thereon. They also own a mobile home in which they live and which they wish to place on their property, which is located at 148 Cumberland Drive in St. Louis County, to

be occupied only by themselves and their immediate family (R. 2, 12, 13).

St. Louis County is a charter county which has duly enacted a comprehensive zoning ordinance, being Chapter 1003, St. Louis County Revised Ordinances 1964, as amended. Pursuant to that ordinance, the Wilkerson's property is included in an "R-5" residential district which, insofar as is relevant here, limits use thereof to a single-family dwelling on a lot of at least six thousand (6,000) square feet for each dwelling unit. The Wilkerson's lot measures 100 x 193 feet and has an area of 19,300 square feet. This property abuts Cumberland Drive, a fifty (50) foot wide public street, which is not a major thoroughfare (R. 1, 12, 13).

The Wilkersons applied to the Director of Public Works of St. Louis County for a permit to occupy their mobile home as a single family dwelling on their property. It is not disputed here that the property in question substantially exceeds the minimum lot size for that use in this zoning district, or that the Wilkersons and their mobile home comply with all other applicable standards and regulations for this use (R. 12). The Zoning Ordinance of St. Louis County, however, so defines the term "single family dwelling" as to exclude from that term any mobile home, and further requires that mobile homes be situated and occupied within the county only in a licensed and designated mobile homepark. For this reason alone, the Director of Public Works refused to issue to the Wilkersons a permit to occupy their mobile home at their chosen location (R. 13).

The present action was initiated on May 31, 1968 by a petition for a writ of mandamus to compel the director and the county to issue an occupancy permit to the Wilkersons for their mobile home at the location they had

chosen (R. 1). The alternative writ issued on June 8, 1968 (R. 4). On July 2, 1968, the Second Amended Petition for Mandamus was filed and became the initial pleading of record in this cause (R. 1). On the same date the Director and the County filed a joint return to the writ (R. 6). On July 5, 1968, Relators filed their reply to the return, which joined the issues in the cause and raised the federal constitutional questions which the Wilkersons ask this Court to determine (R. 8-10, 13).

The Wilkersons' principal contentions, as raised by the pleadings, are that the ordinance provisions in question arbitrarily and unreasonably discriminate against the Wilkersons by excluding their particular home from the definition of a single-family dwelling, thereby denying them the equal protection of the law accorded to other persons in the "R-5" residence zone; furthermore, that the definitional exclusion prevents them from a reasonable, residential use of their property and thereby effectively deprives them of that property without due process of law (R. 9).

The case was submitted to the trial court on stipulated facts (R. 11-12). The trial court quashed the alternative writ and ruled against petitioners (R. 12). The Wilkersons then perfected an appeal to the Supreme Court of Missouri, which raised the same constitutional issues. The Supreme Court of Missouri affirmed the ruling of the trial court in all respects, and it expressly repudiated the Wilkersons' claims under the Federal Constitution (R. 21).

The Wilkersons now petition this Court for its writ of certiorari to review the judgment and opinion of the Supreme Court of Missouri.

REASONS FOR GRANTING THE WRIT

1. The Decision of the Missouri Supreme Court in This Cause Deprives the Wilkersons of Their Property Without Due Process of Law, and It Deprives Them of the Equal Protection of the Laws, in Each Respect Contrary to the Guaranties of the Fourteenth Amendment to the Constitution of the United States.

St. Louis County seeks to characterize the ordinance provisions involved in this case as a valid exercise of the police power of the state, as delegated to the County, in the establishment of a zoning plan for the county, Brief for Respondents in the Missouri Supreme Court, pp. 9-16. This was the major thrust of the county's argument in the courts below, but it circumvents the essential points in this case. It has been well settled since this Court's decision in Village of Euclid v. Ambler Realty Company, 272 U.S. 365, that the inherent police power of a state, when properly delegated to one of its political subdivisions, extends to the enactment of a comprehensive zoning plan which is reasonably calculated to promote the health and safety of the community. The Petitioners herein fully recognize this holding as the law of the land, but it does not foreclose the issues in this case. To be a valid exercise of the police power in this area, a zoning regulation must "bear a rational relation to the health and safety of the community." 272 U.S. at 391. It cannot arbitrarily or unreasonably discriminate against particular persons or classes of persons, or arbitrarily prohibit a use of private property which is reasonably in the light of all surrounding circumstances.

The Wilkerson's property is located in an "R-5" zoning district, R. 12, which permits, among other uses, a single family dwelling, provided only that the lot to be

used contains at least six thousand (6,000) square feet of area, Section 1003.119, SLCRO 1964, as amended. A "dwelling" is defined elsewhere in the ordinance as any building, or portion thereof, used exclusively for human habitation, **except hotels, motels or house trailers,** Section 1003.020 (20) (emphasis added). Other ordinance provisions governing the licensing of house trailers and mobile home parks require that a house trailer permit be obtained from the Director of Public Works before any mobile home is used as a residence outside a mobile home park, Section 805.111-1, SLCRO 1964, as amended. Section 805.111-4(g) SLCRO, as amended, requires the applicant to submit to the Director complete installation plans, including the following information:

> (g) Arrangements for compliance in all respects with the applicable sanitary, health and zoning ordinances of St. Louis County. For the purposes of this subsection, **a trailer is considered to be a single family dwelling with respect to the intensity of the use requirements of the zoning ordinance** (Emphasis added).

There is no contention by Respondents that the Wilkersons have not complied with the health and sanitation requirements of St. Louis County. Respondent's refusal to issue the Wilkersons a permit to occupy their mobile home as a dwelling is based solely on the definition quoted, R. 11-12. Furthermore, the effect of this ordinance is to require anyone living in a mobile home in St. Louis County to live only in a mobile home park.

As the Supreme Court of Pennsylvania stated in a similar case, "this case deals with **the right of people to live on land** a very different problem than whether [Respondent] must allow certain industrial uses within its borders," **Appeal of Girsh**, 437 Pa. 237, 263 A. 2d 395, 399 (emphasis added). The Wilkersons do not contend that mobile homes should be allowed indiscriminately

throughout the County, but only that some provision should be made for such use in, for example, a minimum zoned residential area such as this one. The typical modern mobile home is fifty-five feet long and ten to twelve feet wide, may contain three bedrooms, and has complete sanitary facilities. It is more mobile in name than in fact, requiring special equipment to move it, and when in place it may be practically indistinguishable from the average small house.[1] It differs from a small conventional house principally in that it is completely prefabricated, and it is brought to the site in one piece, where it need only be placed on a foundation and connected to utilities to become a complete dwelling unit. Consideration of the sort of conventional house which is likely to be built on a suburban lot of the minimum size permitted in this zoning district will show that a modern mobile home is a dwelling not inconsistent with the uses permitted in the "R-5" residence zone.

The distinction drawn by the ordinance in this case is one merely of semantics rather than substance. The Wilkersons seek only permission to live in a mobile home on a lot which they own. This is a truly residential use, as opposed to the perhaps more commercial one of operating a mobile home park, and it is therefore consistent with the nature of the area, **In re Wiley**, 120 Vt. 359, 140 A. 2d 11. A number of Courts have in fact taken the position that a mobile home has the characteristics of a residence, and that details of design and structure should be the prerogative of the owner, subject only to appropriate health and safety regulations, **State v. Work**, 75 Wash. 2d 212, 214, 449 P. 2d 806, 808; **Douglas Township v. Badman**, 206 Pa. Super. 390, 213 A. 2d 88; see also **People v. Clute**, 18 N. Y. 2d 999, 1001-02, 224 N.E. 2d 734, 736, 278 N.Y.S. 2d 231, 233-34 (Van Voorhis, J.

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[1] Note: "Zoning Regulation of Mobile Homes in Pennsylvania", 66 Dickenson Law Rev. 301 (1962).

dissenting). The only justification which may plausibly be advanced for the distinction drawn in the ordinance is that the zoning authorities find mobile homes aesthectically less pleasing than homes of more conventional construction. This is not of itself a valid basis for depriving Petitioners of the reasonable use of their property. **Women's Kansas City St. Andrew Society v. Kansas City, Missouri,** 58 F. 2d 593 (8th Circuit).

It can only be concluded that the zoning ordinance involved herein, at least with respect to petitioners' property, is so arbitrary and unreasonable, and non-essential to the general zoning plan, that it deprives petitioners of their property without due process of law; therefore, it cannot be sustained, **Village of Euclid v. Ambler Realty Company,** 272 U.S. 365, 387; **Summerell v. Phillips,** 238 So. 2d 786.

2. The Decision of the Missouri Supreme Court, if Allowed to Stand, Will Deprive Not Only Petitioners But a Large Class of Persons Similarly Situated of Access to Adequate Housing Solely on the Basis of Their Inability to Afford Satisfactory Conventional Construction.

Mobile homes comprise the most significant segment of the supply of low cost, single family housing in this country. According to recent figures, seventy-five percent of new single family homes costing less than $13,000.00 are mobile homes.[2] Moreover, mobile homes provide the only access to home ownership for people of modest means, and they are a significant factor in the overall picture of housing availability.[3] Of all the mobile homes presently

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[2] 130 "Financial World," September 4, 1968 at p. 20.

[3] **Mortgage Credit,** Hearings Before the Subcomm. on Housing and Urban Affairs of the Senate Comm. on Banking and Currency, 90th Cong., 1st Session 159 (1967).

used as permanent residences, only seventy-five percent are located in mobile home parks.[4] Viewed in the light of these circumstances, the classifications in this zoning ordinance take on the colour of discrimination on the basis of petitioners' economic status. Such an economic classification can be justified only by the most compelling public interests.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of Missouri.

Respectfully submitted

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[4] Bartke & Gage, "Mobile Homes: Zoning and Taxation," 55 Cornell L. Rev. 491, 508.

APPENDIX

APPENDIX

In the Supreme Court of Missouri
Division Number One

State ex rel. John H. Wilkerson and Barbara Wilkerson, his wife,
Relators-Appellants,
vs.
David E. Murray, Director of Public Works,
and
St. Louis County, Missouri, a Body Corporate and Politic,
Respondents.
No. 55,340.

Appeal from the Circuit Court of St. Louis County
Hon. George W. Cloyd, Judge

OPINION

(Filed February 8, 1971)

Relators, John H. and Barbara Wilkerson, husband and wife, are the owners of a lot located in R-5 Residence Zoning District of St. Louis County. They were denied a permit to locate and occupy a house trailer on their lot to be used as a residence. In this mandamus action they attack the constitutionality of the ordinance precluding such use of their property. In the trial court the alternative writ of mandamus was quashed and peremptory

writ denied. Relators have appealed from the judgment entered. We have appellate jurisdiction because, among other grounds, St. Louis County is a party.

The stipulated facts include the following: "The property owned by Relators as described in Relators' second amended petition is located within the 'R-5' Residence District. A single family dwelling is a permitted use in said district when situated on tracts of land providing at least 6,000 sq. ft. lot area for each dwelling unit. The property owned by Relators as described in Relators' second amended petition is 100 x 193 ft., containing 19,300 sq. ft. in area. Said property is located in the unincorporated area of St. Louis County and is subject to and under the jurisdiction of St. Louis County. * * * Respondents refuse to issue a permit to Relators for the occupancy of a mobile home on the property owned by Relators for the reason that a house trailer or mobile home as a place of abode on the real estate in question is not a permitted use or conditional use under the provisions of § 1003.119 SLCRO 1964, as amended, the 'R-5' Residential District Regulations. * * * The Zoning Ordinance of St. Louis County defines 'single family dwelling' in such a manner as to prohibit the occupying of trailers and mobile homes in places other than mobile home parks. The mobile home sought to be occupied by Relators was to be occupied by one family * * *." The ordinance in question permits use of the land in R-5 District for single family dwellings and defines a "dwelling" as "any building, or portion thereof, used exclusively for human habitation, except hotels, motels, or house trailers."

If the ordinance before us is valid it is conceded that relators are prohibited from locating and occupying a house trailer on their lot. They contend, however, that the ordinance is unconstitutional because in violation of the due process and equal protection provisions of Art. I,

§ 10, Missouri Constitution, and the Fifth and Fourteenth Amendments to the U. S. Constitution. They say that they have complied with all health and other zoning requirements and should not be prohibited from using their trailer as a single family dwelling by reason of an ordinance which was enacted for aesthetic reasons only and hence is an improper and unconstitutional use of the police power.

At the outset of our consideration of this question we should have before us certain general rules relating to the subject of zoning. "The zoning powers vested in charter counties by the Constitution are in the public interest and designed to promote the public health and welfare the same as zoning provisions of cities." St. Louis County v. City of Manchester, Mo. Sup., 360 S. W. 2d 638, 642. "The legislative body, in this instance the St. Louis County Council, has the duty to determine the use classification to be given any particular area. Unless it should appear that the conclusion of that body is clearly arbitrary and unreasonable, the court cannot substitute an opinion for that of the Council in zoning the property in question and establishing the boundary lines. If the Council's action in zoning a property is fairly debatable, the court cannot substitute its opinion as to appropriate zoning. Landau v. Levin, 358 Mo. 77, 213 S. W. 2d 483, 485 [2, 3]. The Zoning Ordinance in question having been enacted by the legislative body is presumed to be valid and appellants, having challenged the reasonableness of the ordinance as applied to specific property, have the burden of proving its unreasonableness. Flora Realty & Inv. Co. v. City of Ladue, 362 Mo. 1025, 246 S. W. 2d 771, 778 [6]." Desloge v. County of St. Louis, Mo. Sup., 431 S. W. 2d 126, 131, 132. And, although there are exceptions, "it is the general rule that when a legislative body enacts a statute or ordinance which prescribes the meaning to be given to particular words or terms used by it, such mean-

ing is binding on the courts even though at variance with the common and ordinary understanding of the words or terms." State v. Wind, Mo. App., 337 S. W. 2d 554, 560.

We have concluded that the ordinance here in question bears a substantial relationship to the public health, safety, morals or general welfare; that it is not clearly arbitrary and unreasonable, and hence is not unconstitutional. There does not appear to be any case in this state which has decided this particular question but our view is in accord with the great weight of authority elsewhere in this nation. It has been said that "[m]obile homes, as defined in most ordinances and as characterized by most courts, are dwellings. They are residential uses which possess special characteristics which warrant their separate regulation. Thus, they may be confined to mobile home parks, or may be excluded from residential districts. * * * They may be so excluded on the ground that they tend to stunt the growth potential of the land, or on the ground that they involve potential hazards to public health. Absent exceptional circumstances, the exclusion of this use from a residential district is not regarded as unreasonable." Vol. 2, Anderson, American Law of Zoning, § 1152, p. 372. The precise question under consideration was presented in Napierkowski v. Gloucester Township, 29 N. J. 481, 150 A. 2d 481. In holding the ordinance to be valid the court stated that "many local ordinances have, in effect, totally prohibited the use of trailers as permanent residences. And these attempts, for the most part, have been upheld by the courts. * * * The decisions elsewhere highlight the fact that the use of trailers as permanent residences present problems which are oftimes inimical to the general welfare. In addition to the obvious health and safety hazards there are other considerations which a municipality must take into account in regulating the use of trailers. Two of the basic concepts of sound zoning, encouragement of the most ap-

propriate use of land and conservation of property values, may be undermined by the indiscriminate location of trailers within a municipality. There can be little doubt that the maintenance and use of a trailer in a particular locale would tend to stifle development of the area for residential purposes. And from the point of view of aesthetic considerations (which are inextricably intertwined with conservation of the value of property) trailers may mar the local landscape. * * * It is our view that the provisions of the zoning ordinance prohibiting the location of trailers in residence districts and placing plaintiff's lot in a residence district bears a reasonable relationship to the purposes of zoning," and that "prohibition of trailers as residences at other than duly licensed trailer parks or camps is a reasonable exercise of the police power, designed to promote the general health, safety and welfare of the municipality by assuring that adequate provisions are made for drainage, sewerage facilities, water and lighting of trailers and operates to centralize and facilitate enforcement of the aforesaid requirements." 150 A. 2d 487, 488, 489. A similar ordinance was held to be constitutional in Cooper v. Sinclair (Fla.), 66 So. 2d 702. In so ruling the court stated that "[t]he enactment of an ordinance which requires that house trailers used and occupied for living quarters be located in certain designated areas is a reasonable exercise of police power and in direct pursuance of the authority conferred on municipalities to adopt regulations designed to 'promote health and the general welfare' * * *. Appellant has failed to show that the ordinance here in question is not better calculated to promote the health and general welfare of the citizens of Lakeland, to conserve the value of properties, and to encourage the most appropriate use of land, than would be the case were indiscriminate parking and use of trailers permitted throughout the city." 66 So. 2d 705, 706. Other cases which tend to support our decision are Town of

Manchester v. Phillips, 343 Mass. 591, 180 N. E. 2d 333, Town of Southport v. Ross; 284 App. Div. 598, 132 N.Y.S. 2d 390, Livingston Township v. Marchev, 85 N.J. Super. 428, 205 A. 2d 65, Town of Granby v. Landry (Mass.), 170 N. E. 2d 364, and People v. Clute, 18 N.Y. 2d 999, 278 N.Y.S. 2d 231.

We do not agree with relators' contention that the ordinance under consideration was enacted for aesthetic reasons only. The cases heretofore cited demonstrate that there are a number of valid reasons for such zoning. Moreover, it would be almost impossible to separate aesthetic reasons from other considerations since such reasons are "inextricably intertwined" with most of the other considerations mentioned above. We also consider it appropriate to suggest that recent cases decided by this court attach more importance to aesthetic considerations than have some of our prior cases. See Deimeke v. State Highway Commission, Mo. Sup., 444 S. W. 2d 480, and State ex rel. Stoyanoff v. Berkeley, Mo. Sup., 458 S.W. 2d 305.

The authorities cited by relators have been carefully considered but we have concluded that they do not render substantial support for their contention. The first case cited, Boxer v. Town of Harrison, 175 Misc. 249, 22 N.Y.S. 2d 501, ruled an ordinance invalid which prohibited the parking of a trailer on the owner's premises without a license. But in the later case of Town of Southport v. Ross, supra, the New York court held that Boxer was not applicable to a situation like the one here involved. Morris v. Township of Elk, 40 N.J. Super. 34, 122 A. 2d 15, dealt primarily with the power to regulate trailer parks. A statement of dictum therein would appear to support realators' contention. The case of City of Rochester v. Olcott, 173 Misc. 87, 16 N.Y.S. 2d 256, is not a true zoning case but rules invalid the requirement for a license in order to occupy a trailer in the city for more than 48

hours. The opinion contains some statements which tend to support relators' contention but we note that it is a decision by the City Court of Rochester and we are not persuaded to follow it. We do not consider the cited case of Women's Kansas City St. Andrew Soc. v. Kansas City, Mo., 58 F. 2d 593 (8 Cir. 1932), to be applicable to the factual situation before us. In that case an ordinance was held invalid which prevented plaintiffs from using its property as an "Old Ladies Home." But there the property was to be continued to be used as a residence; only twelve persons were to occupy it and the exterior and interior of the residence remained unchanged and always conformed to the ordinance. The case was apparently cited in support of the rule that mere aesthetic consideration will not support the restrictions contained in zoning ordinances.

As we have indicated, we think the reasoning in the cases supporting the majority view is sound and that those cases should be followed by this court. We accordingly rule that the ordinance here involved does not violate the constitutional provisions relied on by relators and hence is valid.

The judgment is affirmed.

LAWRENCE HOLMAN
Judge

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vs.

DAVID E. MURRAY, Director of Public Works, and ST. LOUIS COUNTY, MISSOURI, a Body Corporate and Politic,
Respondents.

Petition for a Writ of Certiorari to the Supreme Court of Missouri

BRIEF OF RESPONDENTS IN OPPOSITION

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TABLE OF CONTENTS

	Page
Opinion below	1
Jurisdiction	1
Questions presented	1
Ordinance provisions involved	2
Statement of the case	3
Argument against granting the writ	4
Conclusion	7

CITATIONS

Cases

City of New Orleans v. Louviere, 52 S.2d 751 (La., Ct. App. 1951) 6

Cooper v. Sinclair, 66 So.2d 702 (Fla. 1953) 5

Davis v. City of Mobile, 16 So.2d 1 (Ala. 1943) 5

Euclid v. Ambler Realty Company, 272 U.S. 365 (1926) 4, 5

Fishman v. Tupps, 257 P.2d 579 (Colo. 1953) 5

Huff v. City of Des Moines, 56 N.W.2d 54 (Ia. 1952) 5

Inhabitants of Town of Windham v. Sprague, 219 A.2d 548 (Sup. Jud. Ct. Md. 1966) 6

Napierkowski v. Gloucester Tp., 150 A.2d 481 (N.J. 1959) 5

State ex rel. Oliver Cadillac Co. v. Christopher, 298 S.W.2d 720 (Mo. 1927) 4

Town of Livingston v. Marchev, 205 A.2d 65 (N.J. 1964) 6
Town of Manchester v. Philips, 180 N.E.2d 333 (Sup. Jud. Ct. Mass. 1962) 5, 6
Town of Marblehead v. Gilbert, 137 N.E.2d 1921 (Sup. Jud. Ct. Mass. 1956) 6

Miscellaneous

Anderson, American Law of Zoning, Section 2.10, pp. 53 and 54 5
St. Louis County Revised Ordinances 1964, as amended, Section 1003.020 (20), Section 1003.119 and Section 1003.167 ..... 2, 4, 6

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. .....

JOHN H. WILKERSON and BARBARA WILKERSON, His Wife,
Petitioners,

vs.

DAVID E. MURRAY, Director of Public Works, and ST. LOUIS COUNTY, MISSOURI, a Body Corporate and Politic,
Respondents.

Petition for a Writ of Certiorari to the Supreme Court of Missouri

BRIEF OF RESPONDENTS IN OPPOSITION

OPINION BELOW

The opinion of the Missouri Supreme Court is reported at 463 S.W.2d 821. (Petition, Appendix p. A-1.)

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

A. Whether a zoning ordinance residence district regulation which excludes the location and occupancy of a house trailer as a residence within the district deprives

petitioners of their property without due process of law, where petitioners own both a house trailer and a single family residence lot?

B. Whether a zoning ordinance definition which distinguishes between "dwelling" and "house trailer" and therefore excludes the location and occupancy of a house trailer as a residence in a single family residence district is unreasonable within the meaning of the equal protection clause of the Fourteenth Amendment?

ORDINANCE PROVISIONS INVOLVED

Section 1003.020, St. Louis County Revised Ordinances 1964, as amended:

> (20) Dwelling: Any building, or portion thereof, used exclusively for human habitation, except hotels, motels or house trailers.
>
> (22) Dwelling, Single Family: A building designed for or occupied exclusively by one family.
>
> (41) House-Trailer: A self-contained mobile structure intended to be used for dwelling purposes which has been or recently may be equipped with other wheels or other devices for transporting said structure.

Section 1003.119, St. Louis County Revised Ordinances 1964, as amended—**"R-5" Residence District Regulations —1.** This section contains the district regulations of the "R-5" Residence District. These regulations are supplemented and qualified by additional general regulations appearing elsewhere in this Chapter which are incorporated as part of this section by reference.

2. Permitted Land Uses and Developments:

(1) Single family dwellings.

(2) Churches.

(3) Public or private kindergarten, elementary, secondary, and collegiate schools.

(4) Nursery schools and day nurseries.

(5) Public and private not-for-profit parks, parkways and playgrounds.

(6) Home occupations.

(7) Information and directional signs.

(8) Fire stations.

(9) Local public utility facilities, provided that any installation, other than poles and equipment attached thereto, shall be adequately screened with landscaping, fencing or walls, or any combination thereof, or shall be placed underground, or shall be enclosed in a structure in such a manner as to blend with and complement the character of the surrounding area. All plans for screening said facilities shall be submitted to the St. Louis County Planning Commission for review. No building permit or installation permit shall be issued until said plans have been approved by the St. Louis County Planning Commission,

(10) Public and private not-for-profit libraries.

(11) Accessory buildings, land uses and activities customarily incident to any of the above uses. Accessory use may include a septic tank, approved by the County Health Department, which shall not exceed 5,000 gallons per day flow, serving an individual dwelling, or non-residential use.

STATEMENT OF CASE

Petitioners' brief adequately sets forth the statement of the case.

ARGUMENT AGAINST GRANTING THE WRIT

A

Petitioners contend that section 1003.119 of the St. Louis County Revised Ordinances, 1964, as amended, is unconstitutional solely on the grounds that a particular use is excluded from the "R-5" Residence District, namely the location and occupancy of a house trailer as a residence within this district. The Petition further alleges that this regulation deprives them of their property without due process of law. It is patently clear from the record that petitioners have not been deprived of any significant property value due to the enactment of the zoning regulation in question. The land owned by them is still useable by them or others on the same terms as it was when purchased, and has not been rendered valueless by any action of respondents. Petitioners rather seek to raise issues based on their inability to make a particular use of the property, but have not established that economic injury has been done to them.

The rights of a municipality to adopt a comprehensive zoning plan as an exercise of its police power were well established by this Court in **Euclid v. Ambler Realty Co.**, 272 U.S. 365 (1926). The fact that a comprehensive zoning plan establishes a district in which a particular use is not permitted is not in itself a violation of the constitutional provision that "no person shall be deprived of life, liberty or property without due process of law." **State ex rel. Oliver Cadillac Co. v. Christopher**, 298 S.W. 720 (Mo. 1927). Accordingly, petitioners hold their property subject to applicable zoning regulations which establish the use classification for the property in question. The Fourteenth Amendment does not insulate private property from zoning regulations enacted by respondents' legislative body pursuant to its police power in order to protect the public health, safety, morals or general welfare of the com-

munity. **Euclid v. Ambler Realty Co.**, 272 U.S. 365 (1926). See also Anderson, **American Law of Zoning**, section 2.10, pages 53 and 54.

The Missouri Supreme Court's decision in this case was one of first impression and concluded that the "ordinance here in question bears substantial relationship to the public health, safety, morals or general welfare; that it is not clearly arbitrary and unreasonable, and hence is not unconstitutional" (Petition, Appendix, p. A-4). The court's decision followed a well-accepted line of authority which has concluded that zoning ordinance provisions prohibiting the location and occupancy of house trailers as residences within districts zoned "Residential" bear a substantial and direct relationship to the public health, safety and morals and general welfare of the community and therefore falls within the perimeter of the due process clause of the Fourteenth Amendment. **Napierkowski v. Gloucester Tp.**, 150 A.2d 481 (N.J. 1959); **Huff v. City of Des Moines**, 56 N.W.2d 54 (Ia. 1952); **Davis v. City of Mobile**, 16 So.2d 1 (Ala. 1943); **Cooper v. Sinclair**, 66 So.2d 702 (Fla. 1953); **Town of Manchester v. Philips**, 180 N.E.2d 333 (Sup.Jud. Ct. Mass. 1962); **Fishman v. Tupps**, 257 P.2d 579 (Colo. 1953).

Petitioners on page [illegible] of their brief contend that modern mobile homes are [illegible]distinguishable from small houses. However, petitioners have failed to cite to the Court any portion of the record which supports this position. In fact, the record does not indicate whether petitioners propose to locate on the property in question a "typical modern mobile home." Another essential point of petitioners' argument refers to a purported "aesthetic" purpose of the ordinances in question. Once again there is nothing in the Stipulation of Facts upon which this case rests to sustain this proposition. In fact, this particular issue was categorically rejected by the Missouri Supreme Court in its decision (Petition, Appendix p. A-7).

B

Respondents' zoning ordinance definition of "dwelling" excludes from its coverage a "house trailer". [section 1003.020 (20), St. Louis County Revised Ordinances 1964, as amended.] The term "house trailer" is defined as a self-contained mobile structure and intended to be used for dwelling purposes which has been or recently may be equipped with wheels or other devices for transporting such structure. [section 1003.020 (41), St. Louis County Revised Ordinances 1964, as amended.] Under the zoning ordinance definitions of "dwelling" and "house trailer" a house trailer may not be located and occupied as a residence within the "R-5" residence district. Respondents' comprehensive zoning plan specifically provides for the location of a house trailer as a residence in a house trailer park. [section 1003.107, St. Louis County Revised Ordinances 1964, as amended.]

The decision of the Missouri Supreme Court recognized that there are a number of valid reasons for such zoning (Petition, Appendix p. A-6). The decisions of other jurisdictions which have considered this matter have concluded that the exclusion of a house trailer from the definition of "dwelling" is a constitutional exercise of the police power and is not arbitrary, capricious or unreasonable. **Town of Manchester v. Philips**, 180 N.E.2d 333 (Sup.Jud. Ct. Mass. 1962); **City of New Orleans v. Louviere**, 52 So.2d 751 (La. Ct. App. 1951); **Town of Marblehead v. Gilbert**, 137 N.E. 2d 1921 (Sup. Jud. Ct. Mass. 1956); **Inhabitants of Town of Windham v. Sprague**, 219 A.2d 548 (Sup. Jud. Ct. Md. 1966); **Town of Livingston v. Marchev**, 205 A.2d 65 (N.J. 1964).

Petitioners have not cited to this Court any authority which supports their contention that the definition of "dwelling" is unreasonable within the meaning of the equal protection clause of the Fourteenth Amendment.

The cases cited on page 8 of the Petition concern instances where a court was required to determine whether a structure falls within the zoning ordinance definition of "dwelling". In fact, none of the cases cited considered any of the constitutional questions raised by the Petition.

Accordingly, based on the record before this Court, there is no evidence which respondents feel could support a finding that zoning ordinance definition of "dwelling" the effect of which is to exclude the location and occupancy of a house trailer as a residence within a residential district and requires such use to be located in a house trailer park is violative of any Fourteenth Amendment guarantees or is arbitrary, capricious and unreasonable. The cases cited by respondents clearly support the enactment of this type of zoning ordinance. The record of this case is devoid of any evidence which supports petitioners' argument with regard to "discrimination on the basis of petitioners' economic status" (Petition, page 10).

CONCLUSION

For the reasons above stated, respondents submit that a writ of certiorari should not issue to review the judgment and opinion of the Supreme Court of Missouri.

Respectfully submitted

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